

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3434 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PATEL PRAFULCHANDRA CHHANABHAI

Versus

BIRTH AND DEATH REGISTRAR

Appearance:

MR BALRAM D JAIN for Petitioner No. 1
MS NANDINI JOSHI, AGP, for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR AD OZA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/10/2004

ORAL JUDGEMENT

1.0 Rule. Ms Nandini Joshi waives service of rule.
At the request of learned counsel this petition is taken
up for final hearing today.

2.0 By way of this petition the petitioner has prayed for a direction to the respondents to make necessary correction in the register maintained under the provisions of Registration of Births and Death Acts, 1969 and to issue fresh amended certificate to the petitioner incorporating the correct name and to issue fresh school leaving certificate after correcting the date of birth of the petitioner.

3.0 The petitioner contends that his correct name is "Praful" and correct date of birth is "8.4.1957". However, inadvertently his name is mentioned as "Prabhul" in the birth certificate and his date of birth is mentioned as 9.3.1957 in his school leaving certificate.

4.0 The petitioner approached the respondent no.1 for correcting his name in the birth certificate which was turned down by the concerned authority. According to the the petitioner the respondent no.2 has also refused to correct the date of birth of the petitioner in the school leaving certificate.

5.0 The petitioner contended that in various documents the name of the petitioner is mentioned as "Praful" and his correct date of birth is shown as 8.4.1957.

6.0 Heard the learned counsel for the respective parties. Learned counsel for the petitioner relied upon a decision of this Court in the case of Dr. Sukumar Vs. District Registrar, Births & Deaths, reported in 1993(1) GLR 93, wherein while considering sections 14, 15 and 16 of the said Act it is held that there is a power to correct an entry incorrectly made.

7.0 Learned counsel next relied upon a decision of this Court in the case of B.K. Suthar Vs. State and Another, reported in 1983(2) GLR 932 wherein it is held as under:

"On a plain reading of rule 171 of the Bombay Civil Services Rules, it is manifestly clear that the government servant has a right to the correction of entry either on the ground of apparent clerical error or any other ground including the ground of want of care on the part of the person responsible for making the entry. The rule nowhere provides for any limitation or making such an application for correction of entry. It is, therefore, beyond the powers and

the authority of the government to introduce a rule of limitation by an executive direction contained in the Government resolution since the Bombay Civil Services Rules are Rules enacted in exercise of powers conferred by proviso to Art.309 of the Constitution of India."

7.1 Learned counsel for the petitioner next relied upon a decision in the case of Mulla Faizal Vs. State, reported in 2002(2) GLR 1553 wherein it is held that the authorities, under the provisions of section 15 read with Rule 12 of the Rules framed thereunder, are duty-bound in law to make necessary enquiries and if necessary to obtain medical opinion to grant change of entry in the Birth register regarding the sex of the appellant and to issue to him a corrected birth certificate.

7.2 Learned counsel for the petitioner also relied upon a decision in the case of Vimal M. Patel Vs. State of Gujarat, reported in 2001(3) GLR 2484, wherein it is held that the Registrar is entitled to hold an inquiry for this purpose and on the basis of material on record he is not powerless to make correct entries.

7.3 Learned counsel for the petitioner also relied upon a decision in the case of Dipika Arvindkumar Pancholi Vs. State of Gujarat and Another, reported in 2003(1) GLR 515, wherein it is held that since the statute is silent, it is the case of casus omissi, i.e. circumstances concerning which the Act is silent, and therefore the powers envisaged under Rule 11 can be extended to enter the name even after a period 15 years.

7.4 Learned counsel for the petitioner also relied upon a decision of the Division Bench of this Court in Letters Patent Appeal No.231 of 2001, wherein it is held that no direction can be issued by any authority to take away the powers of the Registrar of making correction in entries which are erroneous in form or substance in the Register.

7.5 Learned counsel for the respondent is not able to contest the aforesaid settled law.

7.6 As regards correction in the school leaving certificate is concerned, learned counsel for the respondent pointed out that the District Education Officer has no jurisdiction to entertain and effect such change in the school leaving certificate and the petitioner has to approach the Judicial Magistrate, First Class, having jurisdiction under section 13(3) of the

Registration of Births & Deaths Act, 1969. Learned counsel for the respondent has relied upon a decision of Division rendered in Letters Patent Appeal No.699 of 2003 dated 11.8.2003 wherein the Division Bench has dealt with the very same issue. In para 4 of the said decision the Division Bench held as under:

"4. ...Therefore, in view of Regulation 12-A Gujarat Secondary Education Regulations, 1974, school record could not have been corrected after the son of appellant had left the school. The only remedy of the appellant was to approach learned Magistrate, First Class, having jurisdiction in the matter for redressal of his grievance as provided under Section 13(3) of the Act. Therefore, the learned Single Judge was justified in concluding that the appellant has alternative remedy and that it was not necessary to entertain the petition filed under Article 226 of the Constitution. .."

7.7 In view of the above facts and circumstances, the appropriate remedy for the petitioner is to approach the Judicial Magistrate, First Class, for correction of his date of birth in the school leaving certificate.

8.0 As regards the correction in the name of the petitioner, The respondent no.1 authority is directed to entertain the application submitted by the petitioner for correcting the name of the petitioner in the Register maintained under the provisions of Registration of Births & Deaths Act, 1969 within a period of four weeks from the date of receipt of writ of this Court. The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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